Supreme Court, U.S.
FILED
041016 DEC 16 2004
OFFICE OF THE CLERK

(3)

No.

IN THE

Supreme Court of the United States

In re RAYMOND L. SCHLAGEL
Petitioner

v.

DOW CORNING CORPORATION

UNITED STATES DEPARTMENT OF LABOR
Respondents

On Supplemental Petition For Writ of Mandamus To The United States Court Of Appeals For The Sixth Circuit

SUPPLEMENTAL PETITION FOR WRIT OF MANDAMUS

RAYMOND L. SCHLAGEL
64 W. Cobblestone Ct.
Florence, KY 41042
(859) 594-4103

Pro se

REASON FOR SUPPLEMENTAL PETITION

Petitioner Raymond L. Schlagel, also Petitioner for Petition For Writ of Mandamus received by the Supreme Court of the United States on December 6, 2004, is also Petitioner in U.S. Court of Appeals For The Sixth Circuit Case # 04-3838, in which he appealed a Department of Labor Administrative Review Board decision. Petitioner now comes to answer/supplement deficiencies listed per a letter received December 18, 2004 from S. Elliott of Office of the Clerk, Supreme Court of the United States in relation to original Petition. Supplemental Appendix at SA-6-.

PARTIES

Raymond L. Schlagel
Petitioner

U.S. Department of Labor
Respondent

United States Court of Appeals For the Sixth Circuit
Respondent

Dow Corning
Respondent

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STATEMENT OF REASON FOR SUPPLEMENTAL PETITION

Petitioner, Raymond L. Schlagel is responding to S. Elliott's (formerly Sandy Spagnolo) December 7, 2004, letter (Supplemental Appendix at SA-6-), alleging deficiencies in previous Petition for Writ of Mandamus received by the Supreme Court of The United States on December 6, 2004. The two deficiencies given were per Rule 20.1 and Rule 20.3.

The question presented for review in original Petition was:

> Should Petitioner, Raymond L. Schlagel, also Petitioner in U.S. Court of Appeals For The Sixth Circuit Case # 04-3838, in which he appealed a Department of Labor Administrative Review Board decision, be granted his right to have the full and prior record from the U.S. DOL Administrative Review Board be provided to the Court of Appeals for the sake of being heard on all the evidence?

RULE 20.1

The Petition For Writ of Mandamus is justified as it shows that the Writ will be in aid of the U.S. Court of Appeals For The Sixth Circuit, that exceptional circumstances warrant the exercise of this Court's powers, and that adequate relief can not be obtained in any other form or any other court.

An appeal from a governmental agency per Fed. R. App. P. 17 requires that the agency "must file the record within 40 days" with the Court of Appeals. This did not occur. Petitioner then promptly moved that the entire record be provided. The clerk on August 19, 2004

entered an order, denying this motion and thus denying that the full record be filed. Supplemental Appendix at SA-1-. On August 24, 2004, and per Sixth Circuit Rule 45, Petitioner filed a motion to reconsider clerk's order of August 19, 2004. Subsequent documents were filed and a letter written to Sixth Circuit Chief Judge Danny J. Boggs. One concern in the letter was why Petitioner was being erroneously told by the clerk's office that for a record to be certified, the record is sent by certified mail. The motion of August 24, 2004, and subsequent documents and letter were in Appendix of original Petition at A-7-, A-15-, A-22-, and A-24-. The motion of August 24, 2004 has yet to be decided.

To date, the Court of Appeals, by not deciding the motion of August 24, 2004 has constructively denied that the full record be filed. As of January 20, 2005, it is now over 205 days after the petition for review was docketed with the Court of Appeals on June 28, 2004, and is now over 5 times the allotted time required by Fed. R. App. P. 17.

Issuance of a writ of this Court is of imperative public importance as it serves to reinforce Petitioner's right to be heard on the full record and that the full record be promptly filed. It will aid the Sixth Circuit to follow the necessary Federal Rule of Appellate Procedures for required record submittals, so as not to keep an appeal at bay causing excessive delay, such as in this case.

Jurisdictional basis for the Sixth Circuit is 42 U.S.C. § 7622, 15 U.S.C. § 2622, and Fed. R. App. 15.

Petitioner again invokes this Court's jurisdiction under 28 U.S.C. § 1651.

RULE 20.3

The necessary order requested by Ms. Sandy Spagnolo/Elliott was already provided, and can be seen in

original Petition for Writ of Mandamus on page A-1- of Appendix. This order is the one that was entered on August 19, 2004 denying the full record. Supplemental Appendix SA-1. Several conversations with Mr. Jeff Atkins, Sandy's supervisor, and one with Sandy herself after December 7, 2004, confirmed that the requirement of providing an order had already been met and that there is no need to further address this alleged deficiency.

It is of note that since the order denying Motion for Entire Record on August 19, 2004, the Petitioner has since been constructively denied a subsequent motion. This motion allowed per Sixth Circuit Rule 45(b) and filed on August 24, 2004, was to address with the Court of Appeals the same issue of filing the record. Original Petition, Appendix at A-7-.

SPECIAL NOTES

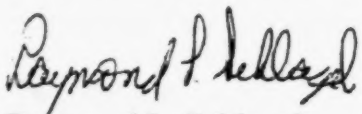
This Supplemental Petition supports the original Petition for Writ of Mandamus which addresses Petitioner's right to the proper certification of the full record from a DOL proceeding. This record happens to contain files in which legal firms had improperly submitted fee petitions. One such firm does work at the U.S. Court of Appeals for the Sixth Circuit. Also, it is of note, that there are federal inquiries into the nature of these legal firms for possible fraudulent activities, including work done as a profit entity, while being legally filed as a non-profit entity.

PRAYER

For the foregoing reasons and the reasons listed in the original Petition for Writ of Mandamus, the Petitioner respectfully prays that a writ of mandamus be issued by this Court directed to both the U.S. Court of Appeals for

the Sixth Circuit, and the DOL Administrative Review Board requiring that the full record of Case # ARB 02-092 be promptly and properly filed with the U.S. Court of Appeals for the Sixth Circuit.

Respectfully Submitted,



Raymond L. Schlagel
Petitioner, *pro se*
64 W. Cobblestone Ct.
Florence, KY 41042
(859) 594-4103

SUPPLEMENTAL APPENDIX

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Letter Received December 18, 2004 from SA-6-
S. Elliott, Office of the Clerk, Supreme
Court of the United States

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RECEIVED
AUG 11 2004
LEONARD GREEN, Clerk

FILED
AUG 11 2004
LEONARD GREEN, Clerk

RAYMOND L. SCHLAGEL)
Petitioner)
)
)
vs.) **CASE NO. 04-3838**
)
)
U.S. DEPARTMENT OF LABOR)
Respondent)
)

MOTION DENIED
FILED 8/19/04
BY THE CLERK PURSUANT TO
RULE 45 (a) SIXTH CIR. RULES
s/ Leonard Green / rld
CLERK
COPIES MAILED 8/19/04

MOTION FOR ENTIRE RECORD & STAY PENDING RECEIPT OF RECORD

Now comes Petitioner Raymond L. Schlagel, and moves this Court for entry of an Order requiring the U.S. Department of Labor Administrative Review Board

(agency), pursuant to Rule 17(b) of FRAP, to file a certified copy of the entire record with the circuit clerk.

On August 5, 2004 the agency (DOL, Administrative Review Board) submitted an incomplete list of documents that were filed of record with the U.S. DOL in ALJ (#2001-CER-1) and ARB (02-092) proceedings. The agency, pursuant to Rule 17(b) of FRAP, has failed to provide a certified copy of the entire record or a certified list adequately describing all documents, transcripts of testimony, exhibits, and other material constituting the record. The agency has failed to state and certify that the list they provided was for all material constituting the record. The Petitioner has not stipulated in writing that a certified partial record or certified partial listing be filed in lieu of the whole record, or a listing of all materials of record.

The documents omitted from the agency's list are advantageous to the petitioner's cause, and are necessary for the Court's review. The omissions include original complaint of 22Nov99, over a dozen of Petitioner's (Complainant's) exhibits, and other filings. They are excessive!

The Petitioner intends to show, and upon by review of the Court, controlled by 5 U.S.C. §§ 706(2)(F), that agency's actions, findings, and conclusions to be unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. To accomplish this, the entire record is required as per FRAP 17(b)(1)(A). Due to the concern that the agency did not provide the entire record as required, the Petitioner requests, pursuant to FRAP 17(b)(3), that the whole record be provided to the Court, and per FRAP 17(b)(1)(A). Further, the Petitioner requests a stay of proceedings until the Court is in receipt of the entire record.

s / Raymond L. Schlagel
Raymond L. Schlagel
64 W. Cobblestone Ct.
Florence, KY 41042
(859) 594-4103

Certificate of Service

I certify that a copy of the foregoing **Motion for Entire Record & Stay** was mailed, postage prepaid, this date of August 10, 2004 to:

Timothy P. O'Mara, Esq.
Middleton & Reutlinger
2500 Brown & Williamson Tower
Louisville, KY 40202-3410

Carol Arnold
Office of the Solicitor, U.S. DOL
200 Constitution Avenue, N.W.,
Suite N-2716
Washington, D.C. 20210

10Aug04
Date

s / Raymond L. Schlagel
Raymond L. Schlagel

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 532
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Leonard Green
Clerk

Robin Duncan
(513) 564-7027
www.ca6.uscourts.gov

Filed: August 19, 2004

Raymond L. Schlagel
64 W. Cobblestone Ct.
Florence, KY 41042

Carol Arnold
U.S. Department of Labor
Office of the Solicitor
200 Constitution Avenue, N.W.
Suite N-2716
Washington, DC 20210

Kenneth S. Handmaker
Middleton & Reutlinger
401 S. Fourth Avenue
Suite 2500 Brown Williamson Tower
Louisville, KY 40202

RE: 04-3838
Schlagel vs. US Dept Labor
District Court No. 02-092

Enclosed is a copy of an order which was entered today in the above styled case.

Robin Duncan
Case Manager

Enclosure

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

December 7, 2004

Raymond L. Schlagel
64 W. Cobblestone Ct.
Florence, KY 41042

RE: In Re Raymond Schlagel

Dear Mr. Schlagel:

The above-entitled petition for an extraordinary writ of mandamus was received on December 6, 2004. The papers are returned for the following reason(s):

> The petition does not show how the writ will be in aid of the Court's appellate jurisdiction, what exceptional circumstances warrant the exercise of the Court's discretionary powers, and why adequate relief cannot be obtained in any other form or from any other court. Rule 20.1.
>
> You have not appended a copy of the judgment or order in respect of which the writ is sought. Rule 20.3 pertaining to petitions for writs of prohibition and mandamus.

Kindly correct the petition so that it complies in all respects with the Rules of the Court and return it to this office promptly so that it may be docketed. Unless the petition is received by this Office in corrected form

within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

This Office shall retain all copies of the petition and your money order in the amount of $300.00 in expectation of timely receipt of a properly prepared petition.

The corrections may be made in the form of a supplemental petition. Forty copies are required in the same booklet format as the mandamus petition.

Sincerely,
William K. Suter, Clerk
By:
s/ S. Elliott
S. Elliott
(202) 479-3025

Enclosures

CERTIFICATE OF SERVICE / AFFIDAVIT OF RAYMOND L. SCHLAGEL, PETITIONER

Raymond L. Schlagel being first duly cautioned and sworn states as follows:

1. My name is Raymond L. Schlagel. I am the Petitioner in U.S. Court of Appeals for the Sixth Circuit, Case No. 04-3838.

2. In compliance with U.S. Supreme Court Rule 29.5 (c) for proof of service, I hereby certify that a true and correct copy of the Supplemental Petition for Writ of Mandamus has been served by U.S. Mail, postage prepaid, this 25 day of January 2005, to the following:

Carol Arnold (3 copies)
U.S. Department of Labor
Office of the Solicitor
200 Constitution Avenue, N.W.
Suite N-2716
Washington, D.C. 20210
(202) 219-7600

Solicitor General of the United States (3 copies)
Room 5614
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

Chief Judge Danny J. Boggs (1 copy)
United States Court of Appeals
For the Sixth Circuit
100 East Fifth Street, Room 532
Potter Stewart, U.S. Courthouse
Cincinnati, OH 45202-3988
(513) 564-7000

Senior Judge Damon J. Keith (1 copy)
United States Court of Appeals
For the Sixth Circuit
100 East Fifth Street, Room 532
Potter Stewart, U.S. Courthouse
Cincinnati, OH 45202-3988
(513) 564-7000

Judge John M. Rogers (1 copy)
United States Court of Appeals
For the Sixth Circuit
100 East Fifth Street, Room 532
Potter Stewart, U.S. Courthouse
Cincinnati, OH 45202-3988
(513) 564-7000

Judge Boyce F. Martin, Jr. (1 copy)
United States Court of Appeals
For the Sixth Circuit
100 East Fifth Street, Room 532
Potter Stewart, U.S. Courthouse
Cincinnati, OH 45202-3988
(513) 564-7000

Kenneth S. Handmaker — Counsel for Dow Corning
Middleton & Reutlinger — (3 copies)
401 S. Fourth Avenue
Suite 2500 Brown Williamson Tower
Louisville, KY 40202
(502) 584-1135

SUPREME COURT OF THE UNITED STATES
1 First Street, N.E. — (original & 40 copies)
Washington, D.C. 20543

3. Per Supreme Court Rule 29.5 (c) and 28 U.S.C. § 1746, I declare and certify under perjury that the foregoing is true and correct.

Raymond P. Schlagel

Raymond L. Schlagel-Affiant

25 Jan 05

Date

STATE OF KENTUCKY)
)
COUNTY OF BOONE)

Sworn to, or affirmed and subscribed in my presence this 25 day of Jan, 2005.

Mary K Beever

Notary Public

My Commission Expires: 1-31-07